

Law Offices

HOLLAND & KNIGHT

A Registered Limited Liability Partnership

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
202-955-3000
FAX 202-955-5564

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May 27, 1997

EDWARD W. HUMMERS, JR.
202-457-7145
ehummers@hklaw.com

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

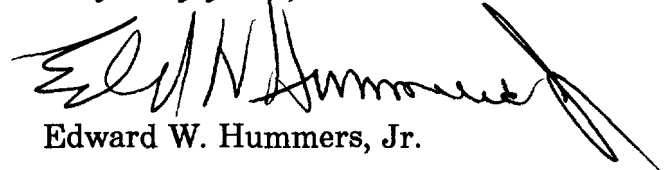
Re: MM Docket No. 97-97
RM No. 9047

Dear Mr. Caton:

Transmitted herewith on behalf of Mt. Juliet Broadcasting, Inc., permittee of FM station WNPI, Mt. Juliet, Tennessee, is an original and four copies of its Reply Comments in the above-referenced MM Docket and Rule Making.

Should there be any questions, please communicate with the undersigned.

Very truly yours,


Edward W. Hummers, Jr.

ewh:ik
Enclosures

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MAY 27 1997

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

)
Amendment of Section 73.202(b))
Table of FM Allotments)
(Mt. Juliet and Belle Meade,)
Tennessee))

MM Docket No. 97-97
RM No. 9047

To: Chief, Allocations Branch

**REPLY COMMENTS OF
MT. JULIET BROADCASTING, INC.**

Mt. Juliet Broadcasting, Inc. ("WNPL"), permittee of FM station WNPL, Mt. Juliet, Tennessee, hereby submits its reply comments supporting the Commission's proposal to amend the FM Table of Allotments by reallocating Channel 294A (106.7 MHz) from Mt. Juliet, Tennessee to Belle Meade, Tennessee and to modify Station WNPL's construction permit accordingly. See Notice of Proposed Rule Making, DA 97-541, released March 21, 1997 ("NPRM").

WNPL's Petition for Rule Making pointed out that it has been unable to implement operation of its authorized station facility at Mt. Juliet, Tennessee, because of electromagnetic interference (EMI) to FAA air navigation facilities. Indeed, following a complaint of interference to air navigation, WNPL voluntarily terminated operations on November 7, 1996. Engineering studies, reviewed by responsible FAA personnel, conclude that there is no site available from which a Channel 294A allotment could provide the required 70 dBu coverage to Mt. Juliet without interference to FAA navigational systems. Thus, the Mt. Juliet allotment is technically defective.

WNPL filed comments in response to the NPRM on May 12, 1997 ("WNPL's Comments"), as did Great Southern Broadcasting Company, Inc. ("Great Southern").¹ Great Southern opposes the Commission's proposal arguing that the removal of Channel 294A from Mt. Juliet and its reallocation to Belle Meade would not result in a preferential arrangement of channels. In addition, Great Southern claims that there is no technical impediment to retention of Channel 294A at Mt. Juliet.² Great Southern is wrong in both of its arguments.

I. The Existing Channel 294A Mt. Juliet Allotment Cannot be Implemented Due to Predicted EMI to Air Navigation Facilities

The NPRM points out that the Commission does not normally make a reallocation from a larger community to a smaller community. NPRM, para. 4. However, this policy is not relevant where an existing allotment is found to be defective and cannot be implemented due to predicted EMI interference to air navigation and attendant air safety concerns. NPRM, para. 4. Since Belle Meade is the smaller community, the Commission specifically requested comment whether such interference exists with respect to the Mt. Juliet allotment for "the entire area in which a transmitter could be located in accordance with our minimum separation requirements and principal city coverage requirement." *Id.*

¹ Comments were also filed by David J. Waynick, Mayor of Mt. Juliet dated May 10, 1997. These well meaning comments essentially provide some demographic information concerning Mt. Juliet. It is unfortunate that the Channel 294A allotment to Mt. Juliet is defective.

² Great Southern, the licensee of WAMB(AM), Donelson, Tennessee, operates WAMB-FM1, pursuant to special temporary authority, to rebroadcast WAMB on Channel 294 during nighttime hours only, ostensibly to overcome Cuban interference to the nighttime signal of WAMB. As noted in the Great Southern Comments, it will be necessary for the translator station to cease operation on Channel 294 once WNPL commences operation in order to avoid causing harmful interference to WNPL. It should be noted that WAMB-FM1 has not limited its operation to nighttime hours and an audio tape of the translator's operation during daytime hours is being forwarded to the Engineer in Charge of the Southern Region requesting that appropriate action be taken against WAMB.

In support of its comments, WNPL submitted an Engineering Statement (attached to WNPL's Comments) which concluded that such preclusive interference existed with respect to the Mt. Juliet allotment. *See* WNPL Comments. WNPL pointed out that the Program Director for Spectrum Policy and Management, Office of Spectrum Policy and Management, Office of Associate Administrator for Airway Facilities, Federal Aviation Administration had reviewed the Engineering Statement and agreed that none of the proposed antenna sites could operate without causing unacceptable predicted EMI to FAA air navigation facilities at the Nashville International Airport and Smyrna Airport.

Great Southern, however, conjures up a set of implausible "ifs" to assert that Channel 294A could provide service to Mt. Juliet without causing EMI interference to FAA facilities. Great Southern Comments. In support of its position, Great Southern submitted an unverified "engineering statement" of William O. Barry. This "engineering statement" fails to disclose that Mr. Barry is the President of Great Southern or set forth any engineering credentials for him.

Mr. Barry's "solution" proposes an operation of 100 watts ERP (the minimum permitted under the rules) at an antenna height of 100 meters from a short spaced site in the center of Mt. Juliet. This scenario is not feasible by reason of Mt. Juliet's zoning laws; most importantly it would not cure the EMI problem. Indeed, Mr. Barry is admittedly uncertain that his proposal will eliminate EMI problems anticipating that the FAA could determine that his proposal "will still cause EMI problems." Engineering Statement of William O. Barry, May 9, 1997 attached to Great Southern's Comments.

Although Great Southern submitted no credible analysis in support of its scenario, WNPL commissioned an engineering study from Carl E. Smith Consulting Engineers to consider Mr. Barry's scenario. See Engineering Statement in Support of Reply Comments (Carl E. Smith Consulting Engineers, May 21, 1997) and supporting Engineering Affidavit of Roy P. Stype ("Reply Engineering Statement") (attached hereto). Unlike Mr. Barry's scenario, the Reply Engineering Report is based upon an analysis using FAA's Airspace Analysis Model computer program, as was the analysis in support of the Engineering Statement.

The Reply Engineering Statement concludes that even the minimum facilities proposed by Mr. Barry would not eliminate EMI to air navigation facilities. The Reply Engineering Statement concludes that the "proposed reallocation is the only possible way in which Channel 294A can be utilized anywhere in the Mount Juliet area while satisfying the FAA's concerns regarding EMI and also complying with the FCC's allocation rules regarding protection to other facilities and providing the required city grade coverage to the station's community of license." Reply Engineering Statement. Nothing Great Southern presents rebuts this conclusion.

The Reply Engineering Statement points out Mr. Barry's failure to address the availability of a site in Mt. Juliet for a 100 meter tower; to consider whether local zoning restrictions would permit the building of such a tower; or even to discuss how such an operation from a short spaced site with the minimum permitted facilities would serve the public interest. *Cf. In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Harrisburg and Albemarle, North Carolina)*, 11 FCC Rcd 2511, para.

16 n12 (1996) ("such claim must be tempered by difficulties in constructing towers high enough to achieve maximum antenna HAATS. Piedmont offers no indication whether those Class C stations would or would not be constrained by such difficulties").

WNPL, however, did consider these issues. Attached hereto is the May 22, 1997 letter of Joseph N. Barker, Esquire, of Farris, Warfield & Kanaday, PLC, Nashville, experienced in zoning and land use in Mt. Juliet. Mr. Barker notes that the site Mr. Barry proposes "appears to be unsuited for the Tower based upon the surrounding uses" and concludes "that there is no reasonable likelihood that the Tower can be constructed at the location identified [by Mr. Barry]." Mr. Barker further concludes, after investigation and a personal interview with the City Manager, Mr. Danny Farmer, "that it is highly unlikely that such a radio tower can be constructed anywhere within the geographic limits of Mt. Juliet." The Town Manager reports "that there or no radio broadcast towers [of 100 meters] presently in existence within Mt. Juliet to his knowledge" and that the tallest permitted tower in Mt. Juliet is limited to 200 feet.

At the end of the day, the Great Southern scenario simply fails to provide a viable solution.³ Mr. Stype's conclusion that there is no site from which Channel 294A can be used to serve Mt. Juliet without unacceptable EMI to air navigation facilities remains un rebutted. The public interest requires the Commission to correct the defective allotment and otherwise allot the FM channel to serve the public interest.

³ Accepting such a "solution" would only encourage opponents to reallocation to propose deliberately limited service contours and otherwise encourage inefficient use of the spectrum. *Cf. Tuck, supra* at para. 31. Artificial and unwarranted manipulation of the Commission's policies should not be condoned for opponents to reallocations any more than for applicants. *See RKO General (KFRC)*, 5 FCC Rcd 3222, para. 11 (1990).

II. An Allotment to Belle Meade is Entitled to a Preference under the First Local Service Priority or the "Other Public Interest Matters" Priority

Section 307(b) requires the Commission to "make distribution of licenses. . . among the several States and communities as to provide a fair, efficient and equitable distribution of radio service. . ." 47 U.S.C. 307(b). The Commission weighs the public interest benefits from FM allotment proposals in light of its FM allotment priorities. The FM priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

A. The Reallotment to Belle Meade is Entitled to a Preference As a First Local Service Priority.

One of the two priorities for the which the Belle Meade reallotment qualifies is the first local service priority. In this connection, the Commission "will not uncritically apply a first local service preference of the FM allotment priorities when a party seeks to reallot its channel to a suburban community of a nearby urban area." NPRM, para. 5. Instead, the Commission will apply existing precedent, citing *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). *Id.*

The Commission provided extensive guidance in *Tuck, supra*, concerning the *Huntington* issue. *Huntington* is a "limited exception to the usual section 307(b) presumption that every separate community needs at least one local transmission service. Accordingly, we are reluctant to extend it beyond its original application--that of a central city and its contiguous suburbs." *Tuck, supra* at para. 23. Because *Huntington* is an exception to section

307(b), the party seeking to apply it against a "competing applicant generally bears the burden of proof on this issue" with "substantial evidence." *Id.*, para. 24. Less evidence is required when the community at issue is smaller and close to the central city. *Id.*, para. 34.

The issue here is whether Great Southern has submitted "substantial evidence" to meet its acknowledged burden of showing that Belle Meade is not independent of Nashville.⁴ Although there is no set of indicia of interdependence that must be shown, certain characteristics are generally considered.⁵ The Commission is concerned that the relationship between a community and the metropolitan area and the proposed coverage not create the appearance of "artificial and unwarranted manipulation of the Commission's policies." *Cf. RKO General (KFRC)*, 5 FCC Rcd 3222, para. 11 (1990).

⁴ There is no question that Belle Meade is a "community"; nor does Great Southern appear to dispute this point although it makes pointed references to Belle Meade's size. In this connection, the Commission does "not believe, however, that we should find that no community exists simply because the community is small. Moreover, the Commission does not require a municipality to provide every public service on its own in order to merit community status.[footnote omitted] Similarly, the absence of a newspaper or a bank is not fatal to community status." *In the Matter of Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 934, para.8 (1990).

⁵ The Commission set forth some of the possible indicia in *Tuck, supra* at para. 36: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

In support of Belle Meade's lack of interdependence from Nashville, Beth Reardon, City Manager of Belle Meade, advises that the city of Belle Meade was incorporated in 1938, becoming a city approximately twenty years ago making a "declaration of independence" from Nashville's transition to a Metropolitan form of government. Belle Meade has its own elected Mayor and Vice Mayor which are part of the Belle Meade Commission. In addition to its Police Department, Belle Meade has its own garbage collection, Post Office and places of worship, including Jewish, Baptist, Episcopalian, and Methodist. In addition to the zoning code acknowledged by Great Southern, Belle Meade also determines and sets its own property tax rates and enacts its own laws and ordinances.

Great Southern, on the other hand, attempting to meet its burden of showing interdependence relies upon overstatement. For example, it erroneously asserts that Belle Meade is "completely surrounded" by Nashville and claims that the Belle Meade service would be to the "entire city of Nashville. . . ." In fact, the southern and eastern borders of Belle Meade adjoin the city of Forest Hills. See Reply Engineering Statement. The Engineering Statement submitted with WNPL's May 12, 1997 Comments also shows that WNPL's service to the Nashville Urbanized Area will be only slightly increased over its authorized service from Mt. Juliet. The Reply Engineering Statement revisited this issue and demonstrates that neither the authorized service from Mt. Juliet nor the proposed service from Belle Meade will remotely approach covering the "entire city," with the Mt. Juliet service estimated at 48.2% and the Belle Meade estimated at 57.7%.

Great Southern tacitly concedes that Belle Meade has a Mayor, City Manager and police force, but makes the unsupported claims that Belle Meade is dependent upon

Nashville for local employment; that Belle Meade's zoning code would prohibited WNPL "by law" from locating its "main studio or business office" in Belle Meade; and that Belle Meade is part of the Nashville advertising market. Assuming, *arguendo*, that these assertions are true, they do not demonstrate such a level of interdependence so as to require the denial of the reallotment of Channel 294A to Belle Meade.

Likewise, Great Southern asserts that the list of Belle Meade businesses submitted by WNPL must be presumed to be Nashville businesses since they have Nashville addresses. This of course is not substantial evidence that those businesses are not located within Belle Meade. In any event, for whatever reason, the business listed in the telephone book chose to identify themselves as Belle Meade businesses.

Ultimately, Great Southern's conclusion of interdependence is limited to disparaging Belle Meade's newspaper as a "shopper" and arguing that Belle Meade does not have its "own telephone book"; "exclusively" assigned telephone exchanges; its "own" Post Office; or exclusive postal zip codes and shares hospitals, schools, libraries, and fire protection with Nashville and other communities. Other than the fact that Great Southern is in error in claiming there is no Post Office within Belle Meade, these remaining points are not sufficient to meet Great Southern's burden. "Evidence that a community relies upon a larger jurisdiction to provide certain services may not be particularly probative of whether that community shares needs and interests with other communities within the larger metropolitan area." *Tuck, supra*, para. 38. Consequently, the reallotment to Belle Meade should be authorized as a first local service priority.

B. Reallocation to Belle Meade in Any Case Should be Granted Under the Fourth FM Priority: "Other Public Interest Matters"

Even if WNPL's proposal were not entitled to a first local FM service priority, it would be entitled to the fourth FM allotment priority--other public interest matters.⁶ See *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama)*, 6 FCC Rcd 6580, para. 27 (1991); *In the Matter of Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Willows and Dunnigan, California)*, 10 FCC Rcd 11522 (1995). Thus, in the NPRM, the Commission noted that "even if we were to make a finding that an allotment to Belle Meade is not entitled to a preference as a first local service, this would not preclude a finding that a Belle Meade allotment would be preferable to a technically defective allotment at Mt. Juliet." NPRM, para. 5.

It is important to note, moreover, that the *Huntington* doctrine of interdependence does not apply to evaluations under the fourth FM priority. *Tuck, supra* at para 23 (*Huntington* a "limited exception to the usual section 307(b) presumption that every separate community needs at least one local transmission service"); See Memo and Order, para. 18 n14 (stating that *Tuck, supra* and *RKO (KFRC)* merely clarified the evidence to be considered in determining "a first local service preference"); *In re Applications of NORTH TEXAS RADIO, INC. For Construction Permit to Change Community of License and NORTH TEXAS RADIO, INC.(Assignor) and COLLIN COUNTY RADIO, L.C. (Assignee) for*

⁶ In *Tuck*, the Commission observed that "section 307(b) requires that we make an efficient, as well as a fair and equitable, distribution of licenses, and a policy that could favor inefficient proposals does not serve the public interest." *supra* Thus, even if none of the FM allocation priorities were available, the Belle Meade allotment would "be preferable to a technically defective allotment at Mt. Juliet." See NPRM, para 5.

Assignment of License and Construction Permit of KAAM(AM), Plano, Texas, 11 FCC Rcd 8531, (1996) ("Since 1951, the doctrine has been applied in comparative hearing cases to defeat the dispositive preference for first local transmission service. . .").

Clearly, the term "other public interest matters" is inherently flexible and permits the Commission to make certain that the section 307(b) objectives of "fair, efficient and equitable distribution" are not frustrated by highly attenuated outcomes based upon analyses under the other three priorities. In these circumstances, however, there is no basis for concern for the flexibility afforded by this priority.

Thus, the sometimes expressed concern that the "flexibility inherent" in the fourth FM priority will allow licensees to undermine the goals of section 307(b) by "abandoning rural, less populated, and undeserved communities in order to seek enhanced financial opportunity in urban areas" does not exist here. *See In the Matter of Amendment of the Commission's Rule regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, para. 11 (1990). Both Mt. Juliet and Belle Meade are incorporated entities that lie totally within the Nashville urbanized area and Great Southern has not argued otherwise.⁷ The reallocation of Channel 294A from Mr. Juliet to Belle Meade therefore is not a reallocation from a rural community to an urban community. Moreover, there is no existing service which the public could legitimately expect to continue. *See Sandy Springs, supra*. Further, the reallocation is required because of factors beyond the control of the proponent; viz., a finding by the FAA of unacceptable EMI to air navigation facilities.

⁷ Nor has the Mayor of Mt. Juliet. *See* Comments of David J. Waynick, dated May 10, 1997.

The Commission has stated that it will act to best discharge the mandate of section 307(b) in applying the fourth FM priority. Here, the most efficient use of the spectrum would be to allow the reallocation to Belle Meade and will best respect and accommodate governmental concerns over EMI interference with air navigational devices and public safety.

III. Conclusion

The Commission should find that the purposes of 47 U.S.C. 307(b) require it to reallocate Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and to modify the Station WNPL construction permit to specify Belle Meade as the community of license.

Since WNPL has diligently pursued the Mt. Juliet site and has continued to employ an operating staff even though the station has been required to be off air because of the EMI threat, WNPL renews its request for expedited consideration of this NPRM.

Respectfully submitted,

MT. JULIET BROADCASTING, INC.

By: 

Edward W. Hummers, Jr.

David A. Vaughan

Julie Chung Kim

Its Counsel

Holland & Knight
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
(202) 457-5921

May 27, 1997

WAS1-262667

FARRIS, WARFIELD & KANADAY, PLC

ATTORNEYS AT LAW

SUNTRUST CENTER

424 CHURCH STREET, SUITE 1900

NASHVILLE, TENNESSEE 37219-2387

JOSEPH N. BARKER

Direct Dial: (615) 782-2333

TELEPHONE (615) 244-5200

FAX (615) 726-3185

May 22, 1997

VIA FACSIMILE: (404) 420-5886

Mr. David Dickey
Ring Radio Company
WALR-AM/FM (KISS 104.7)
209 CNN Center
Atlanta, Georgia 30303

**Re: Construction of Radio Broadcast Tower for WALR-AM/FM (KISS 104.7)
in Mt. Juliet, Tennessee**

Dear Mr. Dickey:

You have inquired of our firm as local counsel regarding the construction of a radio broadcast tower 100 meters in height (the "Tower") within the city of Mt. Juliet, Tennessee, at the location as is identified on attached Exhibit A. In this regard, our firm has undertaken an investigation of the applicable zoning ordinances which exist within that jurisdiction, and have personally interviewed the City Manager, Mr. Danny Farmer. Additionally, attorneys in this firm, including the undersigned, have previous experience regarding the location of similar radio broadcast towers in middle Tennessee.

Based upon our experience and our review of these zoning ordinances and our conversations with Mr. Farmer, it appears that it is highly unlikely that such a radio tower can be constructed anywhere within the geographic limits of Mt. Juliet. Additionally, we believe that there is no reasonable likelihood that the Tower can be constructed at the location identified on Exhibit A. This location appears to be unsuited for the Tower based upon the surrounding uses. There is no zoning specification in existence which presently permits the erection of such a radio broadcast tower. Any such tower would have to be located within an area designated as commercial, and then a specific height variance would need to be obtained.

The procedure for obtaining such a variance would be to apply to the Mt. Juliet Board of Zoning Appeals for a height variance. Public notice would have to be provided and a public hearing would be held. In the past, on similar applications, substantial public opposition has been encountered and it is anticipated that this request would also be met with strong opposition.

Mr. David Dickey
May 22, 1997
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In our interview with Mr. Farmer, he related to us that there are no radio broadcast towers of this height presently in existence within Mt. Juliet to his knowledge. There are substantially shorter towers which are used only for cellular telephone relays. Mr. Farmer confirmed to me that the tallest permitted tower was limited to 200 feet.

Considering the specific location identified on Exhibit A, the zoning ordinances of Mt. Juliet, the requirements for public notice and a public hearing, and the variance process itself which would need to be undertaken, we are virtually certain that the Tower cannot be constructed as proposed.

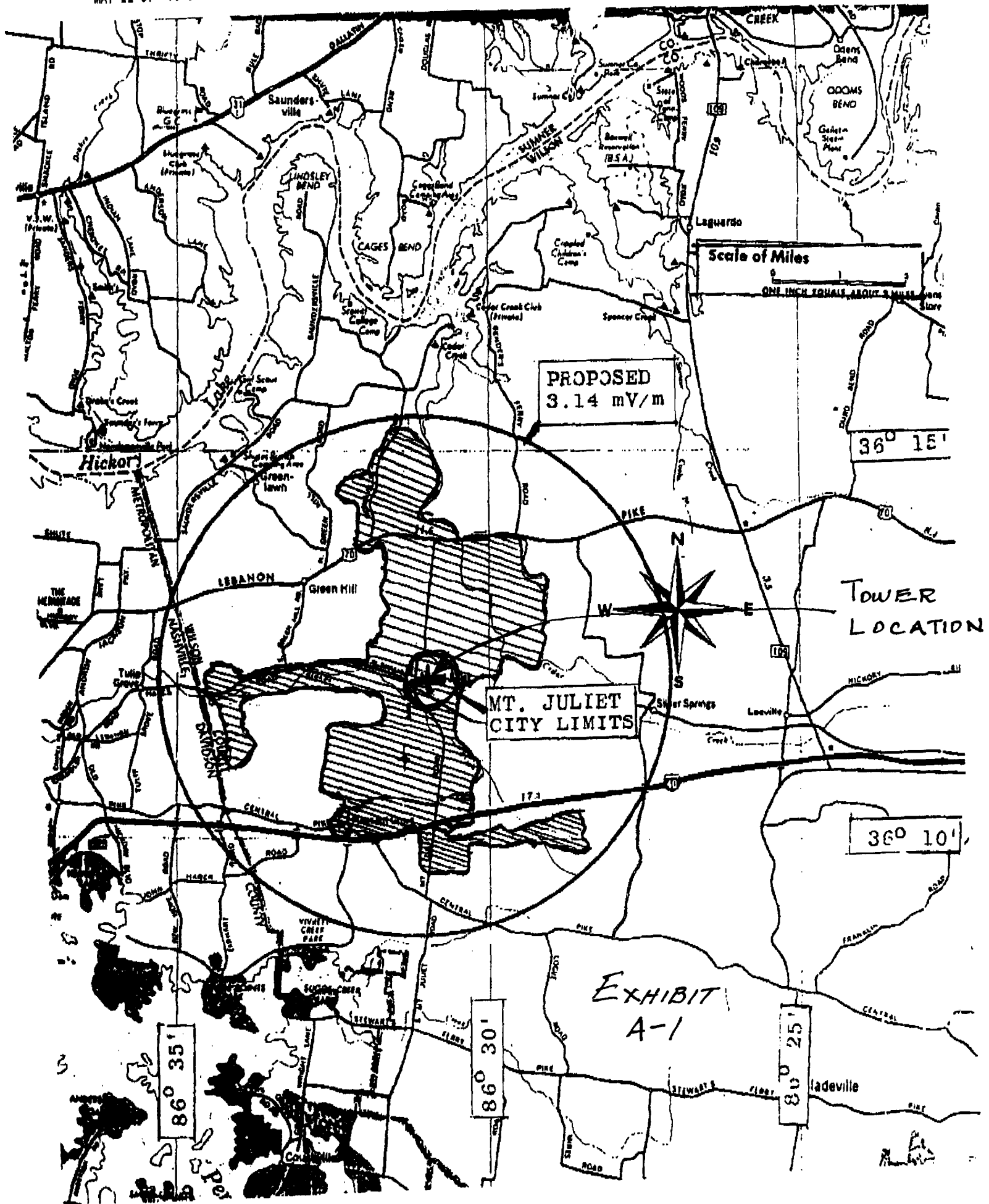
Sincerely yours,

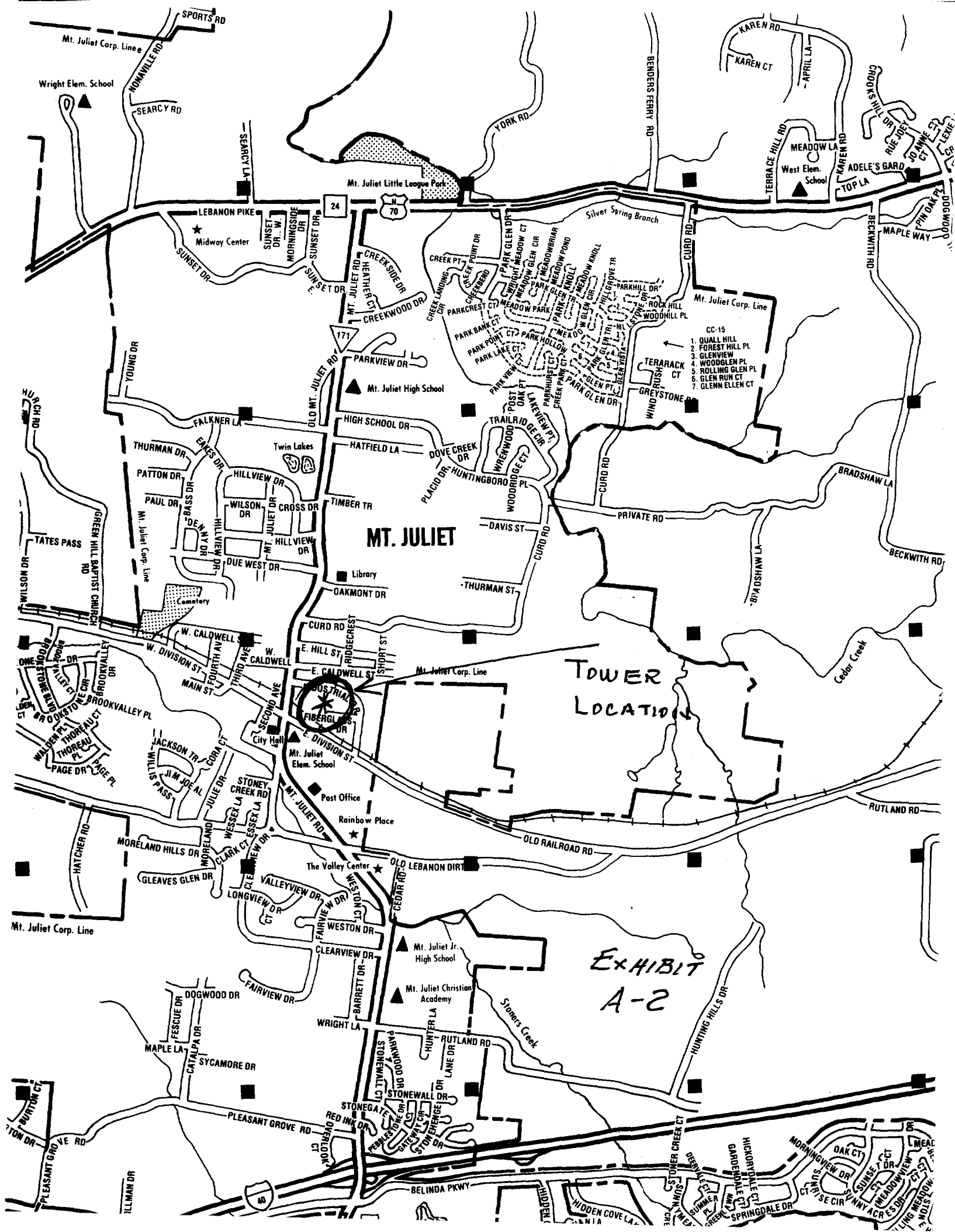
FARRIS, WARFIELD & KANADAY, PLC



Joseph N. Barker

JNB:ldj





**ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS**

MM DOCKET-97-97

CHANNEL 294A - BELLE MEADE, TN

**Mount Juliet Broadcasting, Inc.
Mount Juliet, TN**

May 21, 1997

**Prepared for: Mr. Michael Grant
Mount Juliet Broadcasting, Inc.
50 Music Square West
Suite 901
Nashville, TN 37203**

CARL E. SMITH CONSULTING ENGINEERS

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Engineering Affidavit

Roy P. Stype, III

Engineering Statement

Fig. 1.0 - Present and Proposed
WNPL 3.16 mV/m Coverage
of Nashville

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

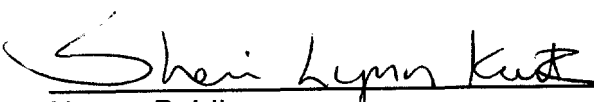
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Mount Juliet Broadcasting, Inc., to prepare the attached "Engineering Statement In Support Of Reply Comments - MM Docket 97-97 - Channel 294A - Belle Meade, TN."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **May 21, 1997.**



Notary Public

SHERI LYNN KURTZ, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires June 14, 2000

/SEAL/

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Mount Juliet Broadcasting, Inc., permittee of construction permit BPH-891012MS for new FM station WNPL - Mount Juliet, Tennessee, and proponent of MM Docket 97-97, which proposes to real- lot Channel 294A from Mount Juliet, Tennessee, to Belle Meade, Tennessee, and modify the WNPL construction permit to specify Belle Meade as its community of license. It is prepared in support of reply comments in the above referenced rulemaking proceeding.

The facilities authorized in the WNPL construction permit were constructed in the fall of 1996 and equipment tests were conducted for several days pursuant to the provisions of Section 73.1610 of the FCC Rules. While awaiting authority from the FCC to commence program tests, as a result of a condition on the WNPL construction permit requiring that documentation be submitted demonstrating that the WNPL operating facilities complied with FCC rules and policies regarding human exposure to nonionizing radiation, the permittee was contacted by local FAA officials, who indicated that there were concerns that the operation of WNPL with the facilities authorized by this construction permit was causing electromagnetic interference ("EMI") to ILS receivers in aircraft utilizing several Instrument Landing System ("ILS") localizers in the Nashville area. Subsequent discussions between representatives of WNPL, the staff of the FCC's Mass Media Bureau, and the headquarters staff of the FAA's Spectrum Management Division resulted in WNPL ceasing any operation with the facilities authorized by this construction permit in light of these concerns regarding aeronautical safety.

The proposal in this rulemaking proceeding to reallocate Channel 294A from Mount Juliet to Belle Meade is the result of extensive studies and coordination with the FAA

which determined that the proposed reallocation is the only possible way in which Channel 294A can be utilized anywhere in the Mount Juliet area while satisfying the FAA's concerns regarding EMI and also complying with the FCC's allocation rules regarding protection to other facilities and providing the required city grade coverage to the station's community of license. WNPL filed extensive comments in this proceeding documenting, as requested in the Notice of Proposed Rulemaking, that it will not be possible to obtain FAA approval for the use of Channel 294A from any location which will provide the required city grade coverage to Mount Juliet but that preliminary FAA concurrence has been obtained for the proposed operation of WNPL in Belle Meade.

The Great Southern Broadcasting Company, Inc., which is the licensee of Radio Station WAMB(AM) - Donelson, Tennessee, and operates WAMB-FM1, pursuant to special temporary authority, to rebroadcast WAMB on Channel 294 during nighttime hours only, ostensibly to overcome Cuban interference to the nighttime signal of WAMB, also filed comments in this proceeding. As noted in the WAMB comments, it will be necessary for WAMB-FM1 to cease operation on Channel 294 once WNPL commences operation in order to avoid causing harmful interference to WNPL. The WAMB comments contain an engineering statement, signed by William O. Barry, the licensee's president, which, without any supporting documentation, attempts to claim that WNPL could construct facilities to provide the required city grade service to Mount Juliet while also satisfying the FAA's concerns regarding electromagnetic interference. This engineering statement is not supported by an affidavit, nor does it contain any information regarding Mr. Barry's engineering qualifications.

The scenario advanced in WAMB's comments would involve the construction of facilities to operate with a nondirectional effective radiated power of 0.1 kilowatts at 100

meters above average terrain from a site located in the heart of Mount Juliet, which, they claim, would provide the required city grade coverage to Mount Juliet and also eliminate any EMI to air navigation facilities. This unsupported, self serving claim is, however, simply wrong. In the first place, even this low power operation from this assumed site would not eliminate the EMI to all Nashville area localizers. These proposed facilities were analyzed utilizing the FAA's Airspace Analysis Model ("AAM") computer program. This analysis found that even these assumed facilities, which employ the minimum power permitted for a Class A station, will cause EMI to two Nashville area localizers:

MQY	108.3 MHz	Runway 32	Smyrna
SSX	109.35 MHz	Runway 20L	Nashville International

It should be noted that only one of these two localizers (MQY) will be changed in frequency to permit Channel 294A to be activated in Belle Meade, as proposed in this proceeding. Thus, even with the proposed localizer frequency changes outlined in the petition for rulemaking in this proceeding, the assumed facilities outlined in the WAMB comments will not satisfy the FAA's concerns regarding EMI to air navigation facilities.

The WAMB comments also fail to address the availability of a site for constructing a tower standing approximately 100 meters above ground in the heart of a suburban residential community. Not only have they failed to submit any documentation that such a site is actually available, but they have also failed to address the issue of obtaining local zoning and other local regulatory approvals for the construction of such a structure in this location. Furthermore, the WAMB comments have failed to address the issue of how a station occupying this allotment which is forced to operate from a

short spaced site with the minimum permitted facilities for the entire foreseeable future would serve the public interest.

The WNPL comments also contained extensive data documenting that the proposed reallocation of this channel from Mount Juliet to Belle Meade will not result in the reallocation of this channel from a rural community to an urbanized area, but instead represents a reallocation from one community located wholly within an urbanized area to another community located wholly within the same urbanized area. This data also showed that the facilities authorized by the WNPL construction permit already provide extensive service, both 3.16 mV/m and 1 mV/m, to the Nashville Urbanized Area and that the proposed reallocation would only result in a marginal increase in the coverage of this urbanized area by both the WNPL 3.16 mV/m and 1 mV/m contours.

The WAMB comments also claim " ...that the proposed reallocation of Channel 294 to Belle Meade will provide a 70 dBu signal to the entire city of Nashville...". This is simply not true. Figure 1.0 is a map exhibit depicting the predicted 3.16 mV/m (70 dBu) contours for both the authorized and proposed operation of WNPL. The contour for the authorized operation of WNPL assumes 6 kilowatt nondirectional operation at 100 meters above average terrain from the site authorized by the WNPL construction permit and assumes uniform terrain in all directions. That for the proposed operation assumes 6 kilowatt nondirectional operation at 100 meters above average terrain from the proposed reference coordinates for Channel 294A in Belle Meade and also assumes uniform terrain in all directions. This map exhibit also depicts the boundaries of Nashville (the Metropolitan Government of Nashville and Davidson County). As is clearly shown in this figure, neither the 3.16 mV/m contour for the authorized operation of WNPL nor that for the proposed operation of WNPL will come anywhere close to encompassing

100% of Nashville. In fact, the authorized WNPL 3.16 mV/m contour encompasses only 48.2% of the city, while the proposed WNPL facilities will only marginally increase this 3.16 mV/m coverage of Nashville, to 57.7%.

The WAMB comments also claim that Belle Meade is completely surrounded by Nashville. Once again, this claim is simply not true. The southern and eastern borders of Belle Meade adjoin the city of Forest Hills. Belle Meade only abuts Nashville along its northern and western boundaries. Furthermore, the cities of Oak Hill and Berry Hill lie just a few miles to the east of Belle Meade. Thus, WAMB's attempt to characterize Belle Meade as a tiny bedroom community totally surrounded by the much larger city of Nashville is, at best, misleading.

In summary, the WAMB comments contain incorrect claims regarding the ability for WNPL to construct facilities which will provide the required city grade coverage to Mount Juliet while also satisfying the FAA's concerns regarding electromagnetic interference to air navigation facilities. These comments also misstate the extent of the coverage which would be provided to Nashville by the proposed operation of WNPL in Belle Meade and attempt to mischaracterize the geographic relationship of the city of Belle Meade to Nashville. In reality, when properly analyzed, the data submitted in the WAMB comments provides further support for the conclusion that there is no way for WNPL to operate in Mount Juliet while both providing the required city grade coverage to Mount Juliet and satisfying the FAA's concerns with regard to electromagnetic interference to air navigation facilities. Based upon the fact that WAMB-FM1 will have to cease operation when WNPL commences operation in order to avoid objectionable interference to WNPL, it is also necessary to seriously question the motives of WAMB in filing these comments.